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HOUSE BILL 541

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY
Danice Picraux

AN ACT

RELATING TO TAXATION; PROVIDING INCOME TAX CREDITS FOR
EMPLOYERS FOR A PORTION OF THE COSTS OF PROVIDING WELLNESS
PROGRAMS FOR EMPLOYEES; ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted
to read:

"[NEW MATERIAL] CREDIT--WELLNESS PROGRAM PROVIDED BY
EMPLOYER.--

A. The tax credit provided by this section may be
referred to as the "wellness program tax credit". For taxable
years beginning on or after January 1, 2009 but prior to
January 1, 2019, a taxpayer who is an employer of two hundred
or fewer employees and who files an individual New Mexico
income tax return may claim a credit in an amount equal to
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1 fifty percent of the amount expended by the taxpayer in a
2 taxable year for a qualified wellness program for the
3 taxpayer's employees who are residents of New Mexico; provided
4 that the credit allowed under this section for any taxable year
5 shall not exceed the product of one hundred fifty dollars
6 (\$150) multiplied by the number of employees who are residents
7 of New Mexico, not to exceed two hundred employees.

8 B. A husband and wife who file separate returns for
9 a taxable year in which they could have filed a joint return
10 may each claim only one-half of the credit that would have been
11 allowed on a joint return.

12 C. A taxpayer who otherwise qualifies and claims a
13 credit pursuant to Subsection A of this section and who is a
14 member of a partnership or business entity that is the employer
15 incurring expenditures for wellness programs may claim a credit
16 only in proportion to the taxpayer's interest in the
17 partnership or business entity. The total credit claimed by
18 all members of the partnership or business entity shall not
19 exceed the amount of the tax credit that could have been
20 claimed by a sole employer. A taxpayer claiming a tax credit
21 for a taxable year pursuant to this section shall not claim a
22 wellness program tax credit pursuant to the Corporate Income
23 and Franchise Tax Act for that same taxable year.

24 D. The credit provided in this section may only be
25 deducted from the taxpayer's income tax liability for the

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1 taxable year for which the credit is claimed.

2 E. A taxpayer may apply for certification of
3 eligibility for the wellness program tax credit from the
4 department of health. If the department of health determines
5 that the taxpayer meets the requirements of this section and
6 rules adopted by the department of health to administer the
7 provisions of this section, it may issue a certificate of
8 eligibility to the taxpayer. To be eligible for the wellness
9 program tax credit, the taxpayer must provide to the taxation
10 and revenue department a certificate of eligibility issued by
11 the department of health.

12 F. As used in this section, "qualified wellness
13 program" means a program implemented by an employer for
14 employees that contains the following four components:

15 (1) a health awareness component that provides
16 for:

17 (a) the dissemination of health
18 information that addresses the specific needs and health risks
19 of the employee; or

20 (b) the opportunity for periodic
21 screenings for health problems and referrals for appropriate
22 follow-up measures;

23 (2) an employee engagement component that
24 provides for:

25 (a) incentives for employee

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1 participation;

2 (b) the tracking of employee
3 participation; or

4 (c) the establishment of a committee to
5 engage employees actively in workplace wellness programs
6 through workplace assessments and program planning, delivery,
7 evaluation and improvement efforts;

8 (3) a behavioral change component that
9 provides for altering employee lifestyles to encourage healthy
10 living through counseling, seminars, online programs or
11 self-help materials that provide technical assistance and
12 problem-solving skills. The component may include programs
13 relating to:

- 14 (a) tobacco use;
- 15 (b) obesity;
- 16 (c) stress management;
- 17 (d) physical fitness;
- 18 (e) nutrition;
- 19 (f) substance abuse;
- 20 (g) depression; or
- 21 (h) mental health promotion; and

22 (4) a supportive environment component that
23 includes:

24 (a) policies and services at the
25 workplace that promote a healthy lifestyle, including policies

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1 and services relating to: 1) tobacco use at the workplace; 2)
2 the nutrition of food available at the workplace through
3 cafeterias and vending machines; 3) minimizing stress and
4 promoting positive mental health in the workplace; 4) where
5 applicable, the provision of accessible and attractive stairs;
6 or 5) the encouragement of physical activity before, during and
7 after work hours; or

8 (b) benefits as incentives for each
9 employee who participates in: 1) the health screenings
10 described in this subsection; or 2) the behavioral change
11 programs described in this subsection.

12 G. The department of health, in consultation with
13 the taxation and revenue department, the workforce solutions
14 department and the New Mexico health policy commission, shall
15 adopt rules necessary to effectuate the provisions of this
16 section."

17 Section 2. A new section of the Corporate Income and
18 Franchise Tax Act is enacted to read:

19 "[NEW MATERIAL] CREDIT--WELLNESS PROGRAM PROVIDED BY
20 EMPLOYER.--

21 A. The tax credit provided by this section may be
22 referred to as the "wellness program tax credit". For taxable
23 years beginning on or after January 1, 2009 but prior to
24 January 1, 2019, a taxpayer that is an employer of two hundred
25 or fewer employees and that files a corporate income tax return

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1 may claim a credit in an amount equal to fifty percent of the
2 amount expended by the taxpayer in a taxable year for a
3 qualified wellness program for the taxpayer's employees who are
4 residents of New Mexico; provided that the credit allowed under
5 this section for any taxable year shall not exceed the product
6 of one hundred fifty dollars (\$150) multiplied by the number of
7 employees who are residents of New Mexico not to exceed two
8 hundred employees.

9 B. A taxpayer that otherwise qualifies and claims a
10 credit pursuant to Subsection A of this section and that is a
11 member of a partnership or business entity that is the employer
12 incurring expenditures for wellness programs may claim a credit
13 only in proportion to the taxpayer's interest in the
14 partnership or business entity. The total credit claimed by
15 all members of the partnership or business entity shall not
16 exceed the amount of the tax credit that could have been
17 claimed by a sole employer. A taxpayer claiming a tax credit
18 for a taxable year pursuant to this section shall not claim a
19 wellness program tax credit pursuant to the Income Tax Act for
20 that same taxable year.

21 C. The credit provided in this section may only be
22 deducted from the taxpayer's corporate income tax liability for
23 the taxable year for which the credit is claimed.

24 D. A taxpayer may apply for certification of
25 eligibility for the wellness program tax credit from the

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1 department of health. If the department of health determines
2 that the taxpayer meets the requirements of this section and
3 rules adopted by the department of health to administer the
4 provisions of this section, it may issue a certificate of
5 eligibility to the taxpayer. To be eligible for the wellness
6 program tax credit, the taxpayer must provide to the taxation
7 and revenue department a certificate of eligibility issued by
8 the department of health.

9 E. As used in this section, a "qualified wellness
10 program" means a program implemented by an employer for
11 employees that contains the following four components:

12 (1) a health awareness component that provides
13 for:

14 (a) the dissemination of health
15 information that addresses the specific needs and health risks
16 of employees; or

17 (b) the opportunity for periodic
18 screenings for health problems and referrals for appropriate
19 follow-up measures;

20 (2) an employee engagement component that
21 provides for:

22 (a) incentives for employee
23 participation;

24 (b) the tracking of employee
25 participation; or

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1 (c) the establishment of a committee to
2 engage employees actively in workplace wellness programs
3 through workplace assessments and program planning, delivery,
4 evaluation and improvement efforts;

5 (3) a behavioral change component that
6 provides for altering employee lifestyles to encourage healthy
7 living through counseling, seminars, online programs or
8 self-help materials that provide technical assistance and
9 problem-solving skills. The component may include programs
10 relating to:

- 11 (a) tobacco use;
- 12 (b) obesity;
- 13 (c) stress management;
- 14 (d) physical fitness;
- 15 (e) nutrition;
- 16 (f) substance abuse;
- 17 (g) depression; or
- 18 (h) mental health promotion; and

19 (4) a supportive environment component that
20 includes:

21 (a) policies and services at the
22 workplace that promote a healthy lifestyle, including policies
23 and services relating to: 1) tobacco use at the workplace; 2)
24 the nutrition of food available at the workplace through
25 cafeterias and vending machines; 3) minimizing stress and

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1 promoting positive mental health in the workplace; 4) where
2 applicable, the provision of accessible and attractive stairs;
3 or 5) the encouragement of physical activity before, during and
4 after work hours; or

5 (b) benefits as incentives for each
6 employee who participates in: 1) the health screenings
7 described in this subsection; or 2) the behavioral change
8 programs described in this subsection.

9 F. The department of health, in consultation with
10 the taxation and revenue department, the workforce solutions
11 department and the New Mexico health policy commission, shall
12 adopt rules necessary to effectuate the provisions of this
13 section."

14 Section 3. APPLICABILITY.--The provisions of this act are
15 applicable to taxable years beginning on or after January 1,
16 2009 but prior to January 1, 2019.